SUPREME COURT OF THE UNITED STATES.

No. 69.

EDWARD WHITE'S LESSEE, PLAINTIFF IN ERROR,

VERSUS

THE CITY OF CINCINNATI.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF OHIO.

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Pleas begun and held at Columbus, on Monday, the twelfth day of July, in the year of our Lord one thousand eight hundred and thirty, and of the independence of the United States of America the fifty-fifth, before the honorable John McLean and John W. Campbell, judges of the circuit court of the United States in and for the seventh circuit and district of Ohio.

JOHN DOE, *ex. dem.* EDWARD WHITE, *plt'ff.*,
vs.
The PRESIDENT, RECORDER, and TRUSTEES of the city of Cincinnati, *def'ts.* } *Ejectment.*

Be it remembered that, heretofore, to wit, at the December term of said court, in the year eighteen hundred and twenty-seven, and of the American independence the fifty-second, came John Doe, on the demise of Edward White, a citizen and resident of the State of Missouri, by Joseph S. Ben-

ham, esquire, his attorney, and filed a certain declaration in an action of ejectment against Richard Roe, a citizen and resident of the State and district of Ohio, which is in the words and figures following, to wit:

United States of America, Ohio district, ss.—United States' circuit court and district of Ohio, of the term of December, A. D. 1827.

Richard Roe, a citizen and resident of the State and district of Ohio, was attached to answer John Doe, a citizen and resident of the State of Missouri, of a plea whereof he, the said Richard Roe, with force and arms, &c., entered into a certain tract of land, described as follows, to wit: lying in front of the city of Cincinnati, and bounded on the west by Main street, on the north by Front street, on the south by the Ohio river, and on the east by the street Broadway, with the appurtenances thereunto belonging, situate and being in the district of Ohio, aforesaid, which Edward White, a citizen and resident of the State of Missouri, had demised to the said John Doe for a term which is not yet expired, and ejected him, the said John Doe, from his said farm, and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, and against the peace of the United States of America; and thereupon, the said John Doe, by Joseph S. Benham, his attorney, complains that whereas the said Edward White, on the sixth day of April, A. D. 1822, at the district aforesaid, had demised the said tenements, with the appurtenances, to the said John Doe, to have and to hold the same to the said John Doe and his assigns, from the fifth day of April, in the year aforesaid, for and during, and until the full end and term of twenty years, from thence next ensuing, and fully to be complete and ended. By virtue of which said demise, the said John Doe enters into the said tenements, with the appurtenances, for the said term, so to him thereof granted as aforesaid, and the said John Doe being so thereof possessed, the said Richard Roe, afterwards, to wit, on the second day of July, in the year aforesaid, with force and arms, &c., entered into the said tenements, with the appurtenances, in which the said John Doe was so interested in manner and for the term aforesaid, which is not yet expired, and ejected him, the said John Doe, from his said farm, and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, and against the peace of the United States of America: wherefore the said John Doe saith that he is injured, and hath sustained damage to the value of two hundred dollars, and therefore he brings suit, &c.

JOSEPH S. BENHAM, *Att. for pl'ff.*

To the President, Recorder, and Trustees of the city of Cincinnati.

GENTLEMEN: I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned, or to some part thereof; and I being sued in this action as casual ejector only, and having no claim or title to the same, do advise you to appear on the first day of the next December term of the circuit court of the United States, seventh circuit and Ohio district, by some attorney of that court, and then and there, by rule of the same court, to cause yourselves to be made defendants in my stead, otherwise I shall suffer judgment therein to be entered against me, by default, and you will be turned out of possession.

Yours, &c.

RICHARD ROE.

Dated this 4th day of December, 1827.

State of Ohio, Franklin county, ss.

Robert S. Finley, of lawful age, being duly sworn, deposeth and saith that, on the nineteenth day of December, in the year eighteen hundred and twenty-seven, he served a copy of the within and foregoing declaration in ejectment, and notice thereunto attached, upon Lewis Howell, esquire, President of the City Council of the city of Cincinnati, while the said City Council were in session, and explained the contents of the said declaration and notice to him in the presence of the members of the said City Council; and further this deponent saith not.

ROBERT S. FINLEY.

Sworn to and subscribed before me, the undersigned, a Judge of the Supreme Court of the State of Ohio, this 25th day of December, 1827.

J. BURNET.

And thereupon this cause was continued; and afterwards, to wit, at the July term of said court, in the year eighteen hundred and twenty-eight, came into the court here the plaintiff, by Benham and Finley, esqs., his attorneys, and B. Storer, esq., the attorney for defendant; and thereupon the said parties filed the following consent rule and plea, to wit:

Circuit court of the United States, seventh circuit, Ohio district, July term, A. D. 1828.

It is ordered by the court, by the assent of both parties and their attorneys, that the city of Cincinnati may be made defendant in the place of the now defendant, Richard Fenn, and that they shall immediately appear to the plaintiff's action, and shall receive a declaration in a plea of trespass and ejectment of the premises in question, and shall immediately plead thereto not guilty, and upon the trial of the issue shall confess lease, entry, and ouster, and insist upon their title only; and if, upon the trial of the issue, the said city of Cincinnati do not confess lease, entry, and ouster, and by reason thereof the plaintiff cannot prosecute his writ, then the taxation of costs upon such non pros shall cease, and the said city of Cincinnati shall pay such costs to the plaintiff as by the court here shall be taxed and adjudged for such his default in non performance of this rule, and judgment shall be entered against the said Richard Fenn, now the casual ejector, by default. And it is further ordered, that if upon the trial of the said issue a verdict shall be given for the defendant, or if the plaintiff shall not prosecute his writ upon any other cause than for not confessing lease, entry, and ouster, as aforesaid, then the lessor of the plaintiff shall pay costs, if the plaintiff himself doth not pay them.

By the court.

B. STORER, *Att. for def't.*
BENHAM & FINLEY, *Att. for pl'ff.*

And the said city of Cincinnati come and defend the wrong and injury, when, &c., and say they are not guilty of the premises in said plaintiff's declaration contained, and thereof put themselves on the country. By

B. STORER, *their Attorney.*

And the plaintiffs doth the like.

And thereupon this cause was regularly continued, from term to term, until the July term of said court, A. D. eighteen hundred and thirty; and

now at this day, to wit, the twelfth day of July, in the year of our Lord eighteen hundred and thirty, at the place first aforesaid mentioned, came the said parties, by their attorneys, and filed in court here their agreement, as follows, to wit:

PRESIDENT, RECORDER, & TRUSTEES of the city of Cincinnati, *vs.* JOHN DOE, *ex dem.* EDWARD WHITE. } *U. S. C. court, district of Ohio. Ejectment, &c.*

It is agreed by and between the parties in this cause, by their counsel, and it is so ordered by the court, that the issue in this cause be confined to that portion of the premises set out in the plaintiff's declaration which excludes a certain lot claimed by Edward White, numbered, as is alleged, 465, and for which a suit is now pending, on error, in the Supreme Court of the United States, reserving any right the plaintiff may legally have to show any possession of said lot to establish his claim to the whole premises.

ESTE, STONE, & FOX, *for def'ts.*
T. EWING, *for plaintiff.*

AND thereupon, for trying the issue, came a jury, to wit, Simon Perkins, jr., Ahab Jinks, William Christmas, David Reese, Christopher Netswanger, Francis Mulenburgh, John Kelly, Nathaniel McLean, Eli Miller, Samuel Butler, Abner Barret, and Nathaniel Beasly, who being empannelled, elected, tried, sworn and affirmed to try the issue joined between the parties, upon their oaths do say, that the said defendants are not guilty of the trespass in the plaintiff's declaration mentioned. Therefore, it is considered by the court, that the plaintiff take nothing by his declaration aforesaid, but be in mercy, &c.; and that the said defendants recover of the said plaintiff their costs and charges by them about their defence in this behalf expended. Upon the trial in this cause the plaintiff, by his attorney, tendered a bill of exceptions, upon the opinion of the court, upon the points set forth in said bill of exceptions, and prays that the same may be signed, sealed, and enrolled, and made a part of the record in this cause, which is accordingly done; which said bill of exceptions is in the words and figures following, to wit:

The lesse of EDWARD WHITE, *vs.* The PRESIDENT, RECORDER, &c., of the city of Cincinnati. } *Ejectment.*

Be it remembered, that on the trial of the above cause, the jury being empannelled and sworn therein, the plaintiff gave in evidence, in support of his title, a deed from John Cleaves Symmes to Joel Williams, dated the 14th day of February, A. D. 1830, which is in the words following, to wit: This indenture, made the fourteenth day of February, in the year eighteen hundred, between John Cleaves Symmes, of North Bend, in the county of Hamilton, and Territory of the United States northwest of the river Ohio, of the first part, and Joel Williams, of Cincinnati, in the county of Hamilton aforesaid, witnesseth, that the said John Cleaves Symmes, for and in consideration of the sum of one hundred and fourteen dollars, to him in hand well and truly paid, at or before the ensealing and delivery hereof, by the said Joel Williams, the receipt whereof the said John Cleaves Symmes doth hereby acknowledge, and thereof and therefrom doth clearly acquit,

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exonerate, and discharge, the said Joel Williams, his executors and administrators, hath granted, bargained, and sold, and by these presents doth grant, bargain, sell, alien, enfeoff, convey, and confirm, unto the said Joel Williams, and to his heirs and assigns, for ever, all those two following described tracts or fractions of land, lying in the front of the town of Cincinnati, and in the seventeenth fractional section in the fourth fractional township and first fractional range of townships, in the Miami purchase, in the county of Hamilton aforesaid; the two fractions hereby granted and conveyed are described as follows, viz: The first tract or fraction of land being all that fraction lying east of and adjoining to the town lot, in Cincinnati, No. four hundred and forty, and south of the east end of Water street, and adjoining along the bank of the Ohio river, and extending up along the Ohio, between Water street and the Ohio, until Water street terminates at the east end thereof; also, all that second fraction or tract of land lying east of and adjoining to the town lot in Cincinnati, No. four hundred and one, and south of the east end of the Front street, so called, in Cincinnati, adjoining along the bank of the Ohio river, and extending up along the Ohio, between Front street and the Ohio, until it comes to fractional section No. eleven, in the aforesaid fractional township, be the contents in acres of the said two fractions above described more, or be they less, as they are laid down and platted on the map and survey of the town of Cincinnati aforesaid; together with all and singular the privileges and appurtenances to the same two fractions, be they more or less, belonging, or in any way appertaining; to have and to hold the said two fractions or plats of land, with their privileges, unto the said Joel Williams, to the only proper use, benefit, and behoof of the said Joel Williams, and of his heirs and assigns for ever. And the said John Cleaves Symmes, for himself and his heirs, doth covenant with the said Joel Williams, and with his heirs and assigns, that at the time of the ensealing and delivery hereof, he, the said John Cleaves Symmes, is lawfully seized of the same by purchase from the United States; and doth further covenant with the said Joel Williams, that all and singular the premises and appurtenances to the same two tracts or parcels belonging, or in any way appertaining, according to the plan of the town as may appear by the map and plat thereof, unto the said Joel Williams, and to his heirs, executors, and assigns, against all manner of claims or superior rights whatsoever, lawfully claiming title or right of soil to the same two fractions, he, the said John Cleaves Symmes, and his heirs, executors, and administrators, shall and will well and truly warrant, and for ever by these presents defend.

In testimony whereof, the said John Cleaves Symmes, together with Susan, his wife, who hereby relinquishes her right of dower in the premises and two fractions of land above described, have hereunto severally set their hands and affixed their seals, the day and year aforesaid.

JOHN CLEVES SYMMES, [SEAL.]

Sealed and delivered in presence of
HENRY KER,
PHINEAS HALE.

Hamilton, ss.

Before me, Joseph Prince, one of the justices assigned to keep the peace in said county, personally came Henry Ker, one of the subscribing witnesses to the within instrument, who being duly sworn, on his oath doth

say, he saw John C. Symmes, the grantor, subscribe the same, and heard him acknowledge it to be his hand and seal, for the purpose herein mentioned.

In testimony whereof I have hereunto put my hand and seal, the 15th day of February, 1800.

JOSEPH PRINCE, [SEAL.]

Endorsed. "Deed from J. C. Symmes to Mr. Joel Williams, for two fractions; received the 14th February, 1800; recorded 20th of same month in book C, vol. 4th, pages 299 and 300.

O. M. SPENCER, *D. R. H. county.*"

And proved by parol that the said Joel entered and possessed part of the premises in the deed described, until dispossessed by the sheriff, under the execution under the decree hereafter mentioned, and that he and those claiming under him had custody of said deed. They also gave in evidence a deed from Joel Williams, and Phebe, his wife, to Jacob White, dated the 13th of August, 1812, which is in the words following, to wit: This indenture, made the thirteenth day of August, in the year of our Lord one thousand eight hundred and twelve, between Joel Williams, of the borough of Cincinnati, in Hamilton county, State of Ohio, of the one part, and Jacob White, of Springfield township, county and State aforesaid, of the other part, witnesseth, that the said Joel Williams, for and in consideration of the sum of five thousand dollars, money of the United States, to him in hand well and truly paid by the said Jacob White, the receipt whereof is hereby acknowledged, and thereof and therefrom doth acquit, release, exonerate, and for ever discharge the said Jacob White, his executors and administrators, has granted, bargained, sold, released, remised, and for ever claim quitted, and by these presents doth grant, bargain, sell, release, remise, and for ever quit claimed unto the said Jacob White, his heirs, and assigns for ever, all that part of a certain fraction of land lying in front of the borough of Cincinnati aforesaid, and bounded as follows, viz: on the west by the eastern boundary of Main street, on the north by the south boundary of Front street, on the south by the Ohio river, and extending up the same between Front street and the Ohio river, until it comes to fractional section number eleven, in the fourth fractional township of the first fractional range of townships in the Miami purchase, (saving and reserving to him, the said Joel, his heirs, and assigns, for ever, the exclusive privilege of the ferry, which he now occupies;) and all the estate, right, title, interest, claim, and demand, of the said Joel Williams, either in law or equity, of, in, and to the said premises hereby granted, and every part thereof, together with all and singular the rights, privileges, and appurtenances to the same belonging, or in any wise appertaining, and the rents, issues, and profits thereof; to have and to hold the said premises hereby bargained and sold, or meant or intended so to be, with the appurtenances, to the said Jacob White, to the only proper use, benefit, and behoof of the said Jacob White, his heirs and assigns for ever. And the said Joel Williams, and Phebe, his wife, for them, their heirs, executors, and administrators, do covenant, grant, and agree, to and with the said Jacob White, his heirs, executors, administrators, and assigns, that they have not done or suffered any thing whereby the title of the said premises to the said Jacob White is, or can be frustrated or annulled.

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In witness whereof the said Joel Williams, together with Phebe, his wife, who hereby relinquishes her right of dower in the premises, have hereunto set their hands and seals, the day and year first above written.

JOEL WILLIAMS, [SEAL.]
PHEBE WILLIAMS, [SEAL.]

Sealed and delivered in presence of
THOMAS THOMPSON,
JOHN MAHARD.

State of Ohio, Hamilton county, ss.

Before me, the undersigned, one of the justices of the peace within and for said county, came personally Joel Williams, and Phebe, his wife, the within grantors, and the said Phebe, being examined separately and apart from her said husband, declared that she did voluntarily sign and seal, as her act and deed, deliver the said conveyance without any coercion or compulsion of her husband, agreeably to the act in such case made and provided, acknowledged the within indenture to be their voluntary act and deed for the uses and purposes therein contained.

In testimony whereof, I have hereunto set my hand and affixed my seal, this 20th day of August, in the year of our Lord one thousand eight hundred and twelve.

JOHN MAHARD, [SEAL.]

Endorsed. "Received for record 29th Sept, 1812, and recorded same day in book K, No. 1, page 336."

And a deed from Jacob White to Edward White, dated 10th of July, 1815, which is in the words following: This indenture, made this tenth day of November, in the year of our Lord one thousand eight hundred and fifteen, by and between Jacob White, of Hamilton county, and State of Ohio, of the one part, and Edward White, of Campbell county, and State of Kentucky, of the other part, witnesseth, that the said Jacob White, for and in consideration of the sum of five hundred dollars, money of the United States, to him in hand well and truly paid by the said Edward White, the receipt whereof is hereby acknowledged, and thereof and therefrom doth acquit, release, exonerate, and for ever discharge the said Edward White, his heirs, executors, and administrators, hath granted, bargained, sold, released, remised, and for ever claim quit, unto the said Edward White, his heirs and assigns for ever, all that certain fraction or piece of land lying in front of the city of Cincinnati, and bounded as follows, viz: on the west by Main street, on the north by Front street, and on the south by the Ohio river, and on the east by the street Broadway, saving and reserving the entire and exclusive privilege of the ferry, now owned and occupied by Joel Williams; also saving and reserving the north half of lot found to be No. 465, laying in front of lot No. 76, and all the estate, right, title, interest, claim, and demand of the said Jacob White, either in law or equity, of, in, and to the said premises hereby granted, and every part thereof, together with all and singular the right, privileges, and appurtenances to the same belonging, or in any wise appertaining, and the rents, issues, and profits thereof; to have and to hold the said premises hereby bargained and sold, or meant or intended so to be, with the appurtenances, to the said Edward White, his heirs and assigns for ever; and the said Jacob White, for himself, his heirs, executors, and administrators, do covenant,

grant, and agree, to and with the said Edward White, his heirs, executors, administrators, and assigns, that he hath not done nor suffered any thing whereby the title to the said premises to the said Edward White is, or can be frustrated or annulled.

In testimony whereof, the said Jacob White hath hereunto set his hand and seal, the day and year first above written.

JACOB WHITE, [SEAL.]

Sealed and delivered in presence of
JAMES BURNS,
JOHN LUDLOW.

State of Ohio, Hamilton county, ss.

Personally came before me, the undersigned, one of the justices of the peace within and for said county, Jacob White, and did acknowledge the within deed of conveyance to be his hand and seal, his act and deed, for the purposes therein mentioned.

Given under my hand and seal this eleventh day of November, in the year of our Lord 1815.

JOHN LUDLOW, [SEAL.]

Endorsed. "Received 27th August, 1827, and recorded in book No. 28, in page 24.

GRIFFIN YEATMAN, *Rec. of Ham. co., O.*"

And having proved the defendants to have been in possession of the lands in the declaration mentioned on the day of serving the copy, rested their case.

The defendants then offered in evidence, as a bar to the plaintiff's action, a record of the proceedings and decree, and execution thereon, in a case in chancery in the Supreme Court of the State of Ohio, in which the President, Recorder, and Trustees of the town of Cincinnati, were complainants, and Joel Williams was defendant, which is in the words following:

Pleas at Cincinnati, in the county of Hamilton, before the honorable Samuel Huntington, Daniel Symmes, and George Todd, esquires, Judges of the Supreme Court of the State of Ohio, on the second day of November, A. D. eighteen hundred and seven:

The PRESIDENT, RECORDER, & TRUSTEES of the town of Cincinnati,
vs.
JOEL WILLIAMS.
} *Chancery.*

To the honorable the Judges of the Supreme Court, in chancery sitting, in and for the county of Hamilton, humbly complaining showeth unto your honors your orators, the President, Recorder, and Trustees of the town of Cincinnati, in the county of Hamilton, that some time in the year of our Lord 1787, John Cleves Symmes, of the county of Hamilton, in the State of Ohio, formerly a citizen of the State of New Jersey, in and by a certain publication, signed by the said John, and bearing date on or about the 26th day of November, 1787, addressed "to the respectable public," among other things, did set forth and declare that the honorable the Congress, by their act of the 3d October, 1787, authorized the honorable the Treasury Board, to enter into a contract with him for a certain tract of land

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beginning at the mouth of the great Miami river; thence running up the Ohio, to the mouth of the Little Miami river; thence up the Little Miami, to a place where a due west line to be continued from the western termination of the northern boundary line of the grant to Messrs. Sergeant, Cullen, and Company, shall intersect the said Little Miami river; thence due west, continuing the said western line, to the place where the said line shall intersect the main branch or stream of the Great Miami river; thence down the Great Miami river to the place of beginning; on condition that the said tract should be surveyed, and its contents ascertained by some proper officer of the United States, who should plainly mark the said east and west line, and render one complete plat thereof to the Board of Treasury, and another to the purchaser or purchasers, and that the said purchaser or purchasers, within seven years, should lay off the whole tract at their own expense into townships and fractional parts of townships, and divide the same into lots, according to the land ordinance of the 20th of May, 1785, and make complete returns thereof to the Treasury Board, that the price of the said land should be one dollar per acre, excepting for certain reservations and gifts set forth in the said publication, payable in specie, loan office certificates reduced to specie value, or certificates of liquidated debts of the United States, subject to a reduction by an allowance for bad lands, and all incidental charges and circumstances whatsoever, one-third of a dollar per acre; and that, in making payment, the principal of the said certificates only would be received, and that the Board of Treasury, for such interest as might be due on the certificates rendered in payment as aforesaid, should issue indents to the possessors; that two hundred thousand dollars of the purchase money should be paid down, on which payment, the purchaser or purchasers should have a right to enter and occupy a part of the said land, not exceeding three hundred thousand acres, which privilege should be enlarged, from time to time, as future payments should be made by the purchasers; that the public, by the foregoing, being made acquainted with the nature of the contract entered into by the said John C. Symmes, for HIMSELF AND ASSOCIATES, the said John begged leave, in the said publication, to communicate to such gentlemen as were desirous of becoming his associates, the scheme adopted for sale and settlement, which should be considered as fundamental thereto by every purchaser and settler; that the first necessary measure was to raise two hundred thousand dollars, and for that purpose, that land warrants should be issued by the said John, or other person appointed, for any number of acres not less than 160, or a quarter part of a section, and always making the warrant for township, section, or quarter part of a section; that such warrant should authorize the person purchasing the same, his heirs, or assigns, to elect and choose, in his own person, or by his or their agent, such township, or lot, or quarter of a lot, as might be most agreeable to the holder of the warrant, provided the same township, or lot, or quarter of a lot, be not previously located and entered on record by a prior applicant; that a plat or map of the land should lie before the Register, at his office, to be kept on the ground on which the land elected should be noted; that the land applied for should be recorded as sold to the owner of the warrant, and entry made thereof on the map; that the price of the land was two-thirds of a dollar per acre, and that the price would, from time to time, be augmented, but that the certificates advised by such augmentation should be appropriated to the making of roads and bridges in the purchase; and the said John did further state, that each pur-

chaser, at the time of purchasing his warrant, should pay one penny per acre for the purpose of defraying the expense of surveying the land, and one farthing per acre in specie, &c., to defray the expense of printing land warrants, purchasing books, paying the Register, and other incidental charges; that provision should be made for securing the purchaser who should pay for a greater number of acres than were contained in his locations, and that, after location and entry, the Register should proceed to make out a patent under his hand and special seal, for this purpose provided, to the purchaser for a township, lot, or quarter of a lot, so located and entered, which should be evidence of the transfer of the fee thereof to the patentee, his heirs and assigns, for ever; that every location should, within two years after location entered, cause his lands to be resurveyed, and if practicable, improved; that the said John Cleves Symmes reserved to himself no other privileges, as a compensation for his agency in the business, than the right of locating certain lands specified in the said publication. And all persons who might think fit to become his associates, were directed to apply to certain agents therein named, as by the said publication, reference being thereto had, will, among other things, more fully and at large appear. And your orators further state to your honors, that some time in or about the month of January, A. D. 1788, one Mathias Denman, of the State of New Jersey, became an associate of the said John Cleves Symmes, agreeably to the terms and conditions of the said publication, by purchasing and entering sundry tracts, or lots of land, and among others, of the 17th fractional section, in the fourth fractional township, east of the Great Miami river, in the first fractional range of townships on the Ohio river, on which the town of Cincinnati, in the county of Hamilton, is in part laid out and built, commonly called the town fraction; and also the entire section No. 18, adjoining thereto, commonly called the town section; and that, after the said purchase and entry, by the said Mathias Denman as aforesaid, and some time within and before the expiration of the said year of our Lord 1788, one Robert Patterson, late of the State of Kentucky, now a resident in the State of Ohio, and one Israel Ludlow, late of said county of Hamilton, deceased, severally purchased from the said Mathias Denman the one equal undivided third part of the said fractional section No. 17, above described, and of the entire section No. 18, adjoining thereto, so that the said Robert and Israel became each a proprietor of one equal undivided third part of the said fractional section No. 17, and the said entire section adjoining thereto, according to the terms and conditions of the before stated publication; and that shortly after the said Robert and Israel had became proprietors, as aforesaid, they, the said Mathias, Robert, and Israel, entered into an agreement for laying out and establishing a town on the said fraction and section of land, and in pursuance of the said agreement, some time in or about the month of January, in the year of our Lord 1789, the said Robert and Israel landed on the ground where the town of Cincinnati now stands, and the said Robert and Israel, (who then acted in the joint capacity of a proprietor, and of an agent for the said Mathias,) proceeded to lay off the said town of Cincinnati, in manner and form as the same hath since been recorded by the said Israel, as one of the original proprietors, in the office of the Recorder for the county of Hamilton; and for the accommodation of the first thirty settlers in the said town, who had been promised, severally, an in lot and an out lot as an encouragement to the settlement of the town, the said proprietors, in the first instance, laid out the front of the said town

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as far westwardly as Main street, and assigned to each of the said settlers his particular lot or donation, by draft, and, as a further inducement to persons to become purchasers of lots and settlers in the said town, and for the future convenience of the citizens, and as an ornament to the said town, the said proprietors then set apart all the ground lying between Front street and the Ohio river, extending from the eastern boundary of the said town fraction No. 17 to Main street, and then and there gave, and publicly declared the said ground to be a common for the use of the citizens of the said town for ever, reserving to themselves only the right of establishing a ferry on the bank of the Ohio, on the said common, and the said tract of ground, bounded northwardly by Front street, eastwardly by the eastern boundary of the town fraction No. 17, southwardly by the Ohio, and westwardly by Main street, was then and there received, and hath from that time been wholly claimed, and until the trespass herein after complained of, the said ground hath been held and enjoyed as a public common, for the benefit and convenience of the citizens of the said town. And it is further stated to your honors that, after the said town had been laid out and the above described ground given to the citizens of the said town, by the proprietors thereof, for the purposes of a common aforesaid, an accurate survey was made of that part of said purchase, including the said town, according to the above in part recited publication of the said John Cleves Symmes, by which the said proprietors were enabled to ascertain, with certainty, the lines and numbers of the said section and fractional section on which the town of Cincinnati had been laid out, and thereby to obtain more specific entries thereof on the book of the Register of the Miami land office, as was done with respect to the said fractional section No. 17, on or about the 4th day of April, A. D. 1791. And your orators further show, that after the above transaction, and some time in and about the month of September, A. D. 1794, letters patent were granted by the President of the United States to the said John C. Symmes, and his associates, for a part of the land described in the before mentioned publication, including the said town, whereby the proprietors and settlers thereof became entitled to receive conveyances, in severalty, for their lots, commons, and public grounds, being associates of the said John, in the proportion of their respective claims; and they further state, that afterwards, on or about the 26th day of November, A. D. 1794, one Samuel Freeman, a citizen of the said town, contracted with the above named Robert Patterson, and purchased of him his remaining interest, as a proprietor of and in the said town, and that, on or about the fourth day of March following, Joel Williams, also a citizen of the said town, whom your orators pray may be made a defendant to this, their petition, contracted with, and purchased of the above named Mathias Denman, his right as a proprietor in the said town, the said Joel and Samuel well knowing the sales and donations that had been made by the original proprietors, and especially knowing that all the said tract of land lying between Front street and the Ohio river, and between the eastern boundary of the town fraction and Main street, as above particularly described, had been set apart and given by the above named original proprietors as a public common for the accommodation of the citizens of the town; and the said Joel well knew, long before he contracted with the said Mathias, not only that the said ground had been given for the purpose aforesaid, but that the original proprietors had in fact received therefor a valuable consideration from the purchasers and settlers in the town, by receiving a large price for

the lots they sold, in consequence of their being rendered more valuable by reason of the said advantages to be derived from the said common; and your orators further show, that on the original map or plat of the said town of Cincinnati, as made by the original proprietors, the whole of the tract of land above described, which is claimed by your orators, on behalf of the town of Cincinnati, as a common for the benefit of the citizens thereof, was left vacant, no lots or streets being laid off on or through the same, but all the lots and streets numbered and named on the said original map terminated at the boundary of the said common; which original map so containing the said common was in the possession of the said Joel Williams several years before he pretended to claim any part of the said common; and they further charge that the said Joel, before he became a town proprietor under Mathias Denman, frequently conversed with divers persons respecting the said common, speaking of it as being highly necessary and useful to the town, expressing much anxiety that it should be preserved as a common, and intimating his fears lest the proprietors, at some future day, should attempt to reclaim the said land for private uses, inasmuch as they had not executed a deed therefor to the town, and as the original map might be suppressed, but to guard against such an event, the said Joel requested those with whom he conversed to bear it in mind that the said ground had been publicly given as a common. And your orators further charge, that after the said Samuel and Joel had become proprietors as aforesaid, it was agreed and understood between them and the said Israel, as proprietors, and the above named John C. Symmes, that the fee of the said town should continue in the said John, where it was supposed to vest, in trust; and that all deeds for town lots sold should be executed by the said John to the purchaser or purchasers, on their producing to him certificates signed by the proprietors, or any two of them, setting forth that the person producing the same was entitled to a deed for the lot or lots claimed, and that deeds should be issued on no other authority. In consideration of which premises, your orators well believe that the inhabitants of the said town were perfectly secure in their right to the aforesaid common; but so it is, may it please your honors, that the said Joel, combining and confederating himself with divers other persons, at present to your orators unknown, whose names when discovered, your orators pray may be inserted in this, their bill of complaint, with apt and proper words to charge them; he, the said Joel, in order to deprive the citizens of the said town of Cincinnati, of all the benefits and advantages of the said common, so given and described as aforesaid, hath procured from the said John C. Symmes a deed of conveyance therefor, in his own name, bearing date on or about the 14th of February, A. D. 1800; and although he, the said Joel, at the time of obtaining the said deed was, and still is, one of the proprietors of the said town, and as such bound in equity and good conscience to procure for and secure to the citizens of the said town of Cincinnati, the said tract of land for the purposes aforesaid. And although the said Joel well knew before, and at the time of procuring the said deed, that the said land had been given by the original proprietors to the citizens of the said town for the purposes of a common, and that it had been held and enjoyed as such from the time the said town was laid out until the day of the date of the said deed, so given by the said John to the said Joel, yet the said Joel, under color of his deed aforesaid, does claim the said ground so given and described as above, in his own right, and hath taken possession of the same, or a part thereof, and hath erected,

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and still doth continue to erect thereon, divers buildings, enclosures, and other nuisances, to the great annoyance and injury of the citizens of the said town, and doth pretend and give out in speeches, that neither your orators nor the citizens of the said town have any right or claim to the said ground as a common, but does pretend that the same was reserved by the original proprietors for their future disposition. And at other times the said Joel does admit, that at the time of the laying out of the said town by the original proprietors, the said ground was set apart, and promised as a common, but that the said town was laid out before a specific entry had been made of the town fraction, and that, therefore, the said proprietors had no right to dispose of the same in manner aforesaid; whereas your orators charge, and the said Joel well knows as the fact is, that the said original proprietors at the same time that they laid out the said town, and assigned to the first settlers their several lots therein, did set apart and publicly give the tract of land above described, to remain as a common for ever; and also, that before the said town was laid out as aforesaid, the above named Mathias Denman had contracted with the above named John C. Symmes for the whole of the ground on which the said town was laid out, extending to the Ohio river; and also, that the said town was laid out in manner aforesaid with the knowledge and approbation of the said John C. Symmes, who did not object thereto as he ought and would have done had not the said Mathias purchased or contracted for the land covered by the said town, as herein before mentioned, and as the said Joel well knew. And upon the pretence aforesaid, the said Joel hath refused to give effect to the aforesaid donation of the original proprietors, by conveying the said ground to your orators for the purposes and uses intended by the original donors, or even permit the citizens of the said town to use the same as a public common, but hath laid it out into town lots, claiming it as private property, and is proceeding as fast as possible to erect on various parts thereof nuisances highly injurious to the citizens, and altogether inconsistent with the design of the proprietors of the said town. And your orators further charge, that by reason of the enclosures aforesaid, the citizens of the said town are annoyed, obstructed in passing and repassing to and from the bank of the Ohio, where they have been wont to resort across the ground so enclosed for the purpose of obtaining water. All which actings and doings of the said Joel and his confederates are contrary to equity and good conscience, and tend to the wrong and injury of your orators and the citizens of the said town. In tender consideration whereof, and inasmuch as your orators are altogether remediless in the premises by the strict rules of the common law, and cannot compel a conveyance of the ground so set apart and given as a common, nor obtain a due execution on any specific performance of the agreement and donation aforesaid, or cause the said nuisances erected and erecting on the said common by the said Joel and his confederates, to be enjoined, or be otherwise relieved in the premises, but by the aid and assistance of the equity and jurisdiction of this honorable court. To the end, therefore, and in order that the said Joel and his confederates, (when discovered,) may, upon their corporal oaths, true and perfect answer make to all and singular the premises herein before set forth, as fully as if the same were again repeated, and particularly interrogated to be answered unto, and more especially that the said Joel, according to the best of his knowledge, information, and belief, may answer and set forth, whether the said town of Cincinnati was not laid out early in the year 1789 by Israel Ludlow and R. Patterson, two of

the original proprietors thereof; whether the said Israel did not act at the same time as the acknowledged agent of Mr. Denman, the other proprietor; and whether the said town was not laid out before the Miami purchase had been surveyed and divided into ranges, townships, and sections; and whether the lots on Front street, above Main street, were not distributed as donations among the first settlers in the town; and whether he hath not frequently seen and had in his possession the first map of Cincinnati, made by the original proprietors thereof; and whether, on the said map, the ground lying between Front street and the Ohio river, and extending from Main street to the eastern boundary of the town fraction, was not left as a common, entirely vacant; and also, whether the said Joel did not know before he became a proprietor of the town, that the land aforesaid was set apart and publicly given and declared to be a common, and that the same was held and enjoyed as such by the citizens of the town in manner as herein above stated: and that the said Joel may further, on his oath, say, whether he did not know or understand that the aforesaid Mathias Denman, who was the first locator of the land commonly called the town section and fraction, had contracted with Judge Symmes for the land now covered by the town of Cincinnati before the said town was laid out; and whether he does not know, or hath not heard the said John C. Symmes say, that the said town was laid out with his knowledge and approbation; and whether he does not know that deeds have been executed to the proprietors of lots on Front street, bounding the said lots on the common; and whether he was not one of the general proprietors of the town at the time he obtained a deed from John Cleves Symmes for the land *above* claimed as a common; and whether, in his contract, as above stated, with the said M. Denman, he did not consider himself as purchasing, subject to former sales and donations; and whether, before he had contracted with M. Denman as aforesaid, he did not know that the said tract of land had been set apart and given as a common in manner aforesaid; and whether, as well before as since his purchase from the said M. Denman, he hath not often conversed with citizens of the town or others respecting the importance and public utility of the said common, expressing fears lest the proprietors should, at some future day, attempt to evade their donation and appropriate the ground to private use; and whether it was not agreed between the proprietors and John C. Symmes, for the convenience of the PROPRIETORS, that the fee of the town should remain in the said Symmes in trust, and that he should execute deeds to the purchasers and donors of lots, on their producing to him certificates of their rights, signed by the proprietors or any two of them; and whether he did not claim and obtain the aforesaid deed conveying to him the tract of land above described as a common, in virtue of his being a proprietor of the town by purchase from M. Denman, and what was the true consideration he gave for the said deed; and whether it was the estimated value of the true land at the time of receiving the said deed, or merely a balance due from the proprietors of the said town on the town fraction. And that the said Joel holding the fee of the said common in himself, and pretending to claim it in his own right, may be decreed to execute the agreement of the original proprietors of the said town of Cincinnati by conveying the lands so given as aforesaid, for the purposes of a common, (reserving only the right of a ferry on the bank of the Ohio river,) to your orators, or to such other persons as your honors may nominate as trustees, for the purposes aforesaid, and that the citizens of the said town may be admitted to use and enjoy

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the said common, and that the nuisances erected thereon may be removed, and in the mean time that the enclosures on the said common may be thrown open, and all further nuisances enjoined until the final decree of your honors on the premises be known. And that your *orators*, on a full and fair discovery of the matters and things aforesaid, may give such other and further relief, touching the premises, as shall be agreeable to equity, and as your honors shall think fit. May it please your honors to grant to your orators a writ of injunction, &c.; and, also, a writ of subpœna, directed to the said Joel Williams, thereby commanding him, on a certain day and under a certain pain, therein to be inserted, personally to be and appear before your honors in this honorable court, then and there to answer the premises, and to stand to and abide by such answer and decree therein as to your honors shall seem agreeable to equity and good conscience. And your orators shall ever pray, &c.

JOSEPH PRINCE, *President.*

Seal of the Corporation of Cincinnati affixed, this 11th of August, 1814.
MATTHEW NIMMO, *Clerk.* [SEAL.]

Hamilton county, ss.

The PRESIDENT, RECORDER, & TRUSTEES of the town of Cincinnati, *vs.* JOEL WILLIAMS. } *In chancery.—Answer.*

The answer of Joel Williams, the defendant, to the bill of complaint of the President, Recorder, and Trustees of the town of Cincinnati, complainants.

This defendant, now and at all times hereafter saving and reserving to himself all and all manner of benefits and advantages of exception that may be had or taken to the many errors, uncertainties, and manifold insufficiencies in the complainants' said bill of complaint contained, for answer thereto, or unto so much thereof as the defendant is advised is material or necessary for him to make answer unto, he answereth and saith, that some time previous to the twenty-fifth day of August, in the year one thousand seven hundred and eighty-eight, one Mathias Denman, of the State of New Jersey, mentioned in the bill of your petitioners, purchased of one Joseph Halsey, jr., a land warrant under John C. Symmes, also mentioned in the said bill of your petitioners, for six hundred and forty acres of land, to be laid out within the tract granted by the honorable Congress of the United States to the said John C. Symmes, in manner as set forth in the bill of your petitioners, which said warrant was, by agreement of said parties, to be laid as nearly opposite the mouth of Licking river as an entire section of land could be found, after the said land should be divided into townships and sections, and in pursuance of said agreement said warrant was afterwards laid on the tract of land now known by the name of the entire section, No. eighteen, on which the town of Cincinnati, in part, now stands, and also mentioned in the bill of your petitioners; and your respondent begs leave further to state to your honors, that after said purchase, so made as aforesaid by the said Mathias, of said warrant as aforesaid, he, the said Mathias, on or about the twenty-fifth day of August, in the year one thousand seven hundred and eighty-eight, entered into a contract with one Ro-

bert Patterson, named in the said bill of your petitioners, and one John Filson, of Lexington, Kentucky, whereby the said Mathias conveyed and sold unto the said Robert Patterson and the said John Filson two equal undivided third parts of all his, said Denman's, right, title, and interest, of and to said land, so claimed by virtue of said warrant so purchased as aforesaid; and the said Mathias, Robert, and John then and there further agreed, that all and every institution, determination, and regulation, respecting the laying off a town and establishing a ferry at and upon the premises so holden by virtue of said warrant, should be the result of the united advice and consent of all the parties to said agreement. And your respondent begs leave further to state, that it was afterwards further agreed, by and between the said Mathias, Robert, and John, that a town should be laid out at and upon the premises, and in pursuance of said agreement, the said Mathias and the said John, constituted and appointed one Israel Ludlow, also mentioned in the bill of your petitioners, their agent, and, together with the said Robert Patterson, one of the proprietors, some time in or about the month of September, in the year one thousand seven hundred and eighty-eight, landed on the ground, and shortly after proceeded to survey and lay out a part of the lots on which the town of Cincinnati now stands. And your respondent would further state to your honors, that the said Israel Ludlow never was, to the knowledge of your respondent, nor did he ever act as a proprietor of said town, but that he acted merely as the agent of the said Mathias and the other proprietors of said land, claimed by virtue of said warrant as aforesaid. And your respondent would further show to your honors, that a part of the lots on which the town of Cincinnati now stands were laid out by the said Israel Ludlow, acting in the capacity of agent as aforesaid, and the said Robert Patterson, one of the proprietors, as aforesaid, before the Miami purchase had been surveyed and laid out into ranges, townships, and sections; that the said lots bounding southwardly on Front street, and westerly on Main street, were first laid out, and that all the lots northerly of Front street, opposite the land claimed as a common, bordering westwardly on Main street, and extending northerly as far as the foot of the hill, (which is now called the bottom,) were considered as donations for the use and benefit of the first settlers of said town; that the said lots, to the number of sixty, were assigned, by draft, two to each of the said settlers, as his particular donation, thirty being in lots, the same number of out lots, or thereabouts. And your respondent would further state to your honors, that the lands lying between Front street and the Ohio river, and claimed as a common by your petitioners, was, by the said Israel Ludlow, acting in the capacity of agent as aforesaid, and the said Robert Patterson, reserved until the Miami purchase should be surveyed and laid out into ranges, townships, and sections, when it would be more fully ascertained whether said lands, claimed as aforesaid, would fall within the entire section opposite the mouth of Licking river, and in case said land should fall within said entire section, then the same would be considered as being reserved for the use of said Denman, Patterson, and Filson, proprietors as aforesaid, to be by them laid out and disposed of as they at any future period should deem most conducive to their own interest and advantage, all of which was publicly declared by the said Israel Ludlow, acting in the capacity of agent as aforesaid, as your respondent has frequently heard, and verily believes to be true. And your respondent would further state, that he never knew, nor does he believe, that the said proprietors ever publicly

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declared the said land, claimed as aforesaid, to be a common for the use and benefit of the inhabitants of the town of Cincinnati, as stated in the bill of your petitioners, but that the same was reserved in manner as above stated. And your respondent begs leave further to state to your honors, that, on or about the first day of April, in the year one thousand seven hundred and ninety-one, the said Mathias Denman, by Israel Ludlow, his agent, applied to the said John C. Symmes to purchase, and did, in fact, purchase of the said Symmes, that tract of land now known by the name of fractional section No. seventeen, mentioned in the said bill of your petitioners, and the said John C. Symmes, in pursuance of said agreement, and on or about the same fourth day of April, in the year aforesaid, give and execute his land warrant to the said Mathias Denman for the number of acres said fractional section No. seventeen, as aforesaid, was supposed to contain, and did then and there deliver the same to the said Israel, as the agent of the said Denman as aforesaid, which said warrant, so given by the said Symmes to the said Denman, was, by the said Israel, acting in the capacity of agent as aforesaid, laid on the said fractional section No. 17, in pursuance of said agreement made with the said John C. Symmes as aforesaid. And your respondent would further state to your honors, that, on or about the twenty-sixth day of November, in the year one thousand seven hundred and ninety-four, the said Robert Patterson contracted with one Samuel Freeman, then a resident of Cincinnati, as stated in the said bill of your petitioners, whereby the said Robert sold and conveyed to the said Samuel all his right and title as a proprietor of said town. And your respondent would further state, that the said purchase made by the said Samuel Freeman of all the right, title, and interest of the said Robert Patterson, as aforesaid, to wit, on or about the seventh day of November, in the year one thousand eight hundred and three, your respondent entered into a contract with the said Samuel Freeman, whereby the said Samuel agreed to convey, and did, in fact, for a valuable consideration paid by your respondent, sell and convey to him, by good and sufficient conveyances, all his, said Samuel's, right, title, and interest, as a proprietor of said town as aforesaid. And your respondent begs leave further to state to your honors, that, on or about the fourth day of March, in the year one thousand seven hundred and ninety-five, he, your respondent, entered into a contract with the said Mathias Denman, whereby the said Mathias agreed to convey, and did, in fact, on or about the said fourth day of March, in the year aforesaid, for the consideration of five hundred and fifty dollars paid by your respondent, sell and convey, by good and sufficient conveyance, to your respondent, the one equal undivided third part of all that certain tract of land, together with all and singular the appurtenances thereto belonging, or in any wise appertaining, lying and being in the then Northwestern Territory, and now State of Ohio, bounded on the west by lands known by the name of Dayton's sections, on the north by lands known by the name of James Henry's sections, on the east by Judge Symmes's sections, and on the south by the Ohio river, thereby including all that tract of land known by the name of the entire section No. 18, and also all that tract of land known by the name of the fractional section No. 17, on which the town of Cincinnati now stands, as described in the bill of your petitioners. And as answer to the charge stated in the bill of your petitioners, to wit: "That your respondent, before he became a town proprietor under the said Mathias Denman, frequently conversed with divers persons respecting the said common, speaking of it as being highly

necessary and useful to the town, expressing much anxiety that it should be preserved as a common, and intimating his fears lest the proprietors, at some future day, should attempt to reclaim the said land for private uses inasmuch as they had not executed a deed, &c.," your respondent begs leave to state to your honors, that having heard that said lands, claimed as aforesaid, had been reserved in manner as before stated by the proprietors, your respondent did, at several times, converse with divers persons, citizens of said town, respecting said land claimed as a common aforesaid, requesting said citizens with whom he conversed to procure, or at least endeavor to procure, a deed or note, or some note or memorandum in writing, amounting to a conveyance of said land, claimed as aforesaid, to the citizens or inhabitants of said town, for the use and purposes mentioned in said bill of your petitioners, but said citizens neglected to procure any instrument, note, or memorandum, in writing, from the proprietors of said town, or from the said Mathias Denman, amounting to a conveyance, or any agreement to convey said lands, or any part thereof, so claimed as aforesaid. And your respondent begs leave further to state to your honors, that long before he became a proprietor of said town under the said Mathias as aforesaid, he made inquiry, both of the said Mathias Denman and of the said Robert Patterson, severally, whether the said land claimed as a common had been set off by the proprietors of said town for the use of the citizens thereof, by them or either of them, publicly declared to be a common, granted by the said proprietors for the uses and purposes as mentioned in the said bill of your petitioners; to which inquiry of your respondent the said Mathias and the said Robert both severally answered, that the said land so claimed as aforesaid, had not by them, or by their direction, or with their knowledge or consent, been set off as a public common, nor had they or either of them, as proprietors of said town, ever publicly declared the same to be set off and given as such for the uses and purposes mentioned in said bill. But the said Mathias and the said Robert, both severally declared to your respondent that the said land so claimed as aforesaid, had been by them, or by their agent as aforesaid, reserved in manner as before set forth in this, your respondent's answer; and your respondent relying, and verily believing the aforesaid affirmations of the said Mathias and the said Robert, so made as aforesaid, together with other corroborating circumstances, was induced, and under the impression that the said Mathias had a good right and title to all and every part of the said fractional section No. seventeen, and also to the one equal undivided third part of the entire section No. seventeen, and also to the one equal undivided third part of the entire section No. eighteen, as aforesaid, did, in fact, enter into the contract aforesaid with the said Mathias Denman, whereby the said Mathias sold and conveyed to your respondent, in the manner as before set forth, said lands so described as aforesaid; and under the same impressions, your respondent contracted with and purchased of the said Samuel Freeman, claiming under the said Robert Patterson, all his, said Samuel's, right, title, and interest in said town, in manner aforesaid. In answer to the question stated in the bill of your petitioners, to wit, whether your respondent, in his contract with the said M. Denman, did not consider himself as purchasing subject to former leases and donations, your respondent states that he considered himself as purchasing subject to those donations that had actually been made of the lots lying north of Front street, and no others; and in answer to the question stated in said bill, to wit, whether your respondent does not know that deeds have been executed to the proprietors of lots on Front street, bound-

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ing the said lots on the common, your respondent answers and says, that he does not; that he has heard that one deed has been drawn bounding said lot south on the commons, by which your respondent supposed that said lot was considered as being bounded south on Front street, and not that Front street was actually included in said deed, thereby making said land claimed as a common the south boundary of said lot. And in answer to the question of your petitioners stated in their said bill, to wit, whether your respondent did not claim and obtain the deed conveying to him the tract of land described as a common, in virtue of his being a proprietor of said town by purchase from M. Denman, and what was the true consideration he gave for the said deed, &c., your respondent begs leave to state to your honors, that at the time your respondent contracted with and purchased from the said Mathias Denman his right and title to said land, as before described, in addition to the said sum of five hundred and fifty dollars paid to the Denman as aforesaid, he, your respondent, assumed upon himself as a part of the consideration or purchase money for said land, a certain sum of money due from the said Denman to the said John C. Symmes, by virtue of his, said Denman's, original agreement with the said Symmes in the purchase of said lands, or a part thereof, which said sum so due as aforesaid, from the said Denman to the said Symmes, and so by your respondent assumed as aforesaid, together with the said sum of five hundred and fifty dollars paid to the said Denman by your respondent as aforesaid, was considered as the real estimated value of said land at the time of the purchase made by your respondent as aforesaid; and in pursuance of said agreement and said assumption, your respondent, on or about the fourteenth day of February, in the year one thousand eight hundred, paid to the said John C. Symmes said sum of money so assumed as aforesaid, amounting to one hundred and eighty dollars, or thereabouts, and then and there received from the said John C. Symmes a deed of conveyance of a part of said fractional section No. 17, so contracted for and purchased of the said John C. Symmes, by the said Israel Ludlow, acting as agent for and in behalf of said Mathias Denman aforesaid. And in answer to the question stated in said bill, to wit, whether your respondent did not know before he became a proprietor that said land claimed as a common had been held and enjoyed as such, as stated in their said bill, your respondent begs leave to state to your honors, that said lands had never, to the knowledge of your respondent, been given and publicly declared by the proprietors to be a common for the uses and purposes as stated in said bill, nor had the proprietors ever given to the citizens possession thereof as such, but that the same having been reserved in manner aforesaid, was suffered by the said Mathias Denman, proprietor thereof, after his purchase aforesaid from the said Symmes, to lie vacant, he, the said Mathias, not exercising his rights to the same as he was justly authorized and legally entitled to do at any time he should deem proper and conducive to his own interest and benefit; and in answer to the question of your petitioners, stated in their said bill, to wit, whether your respondent did not know or understand that the aforesaid Mathias Denman, who was the first locator of the land commonly called the town section and fraction, had contracted with Judge Symmes for the land now covered by the town of Cincinnati, before the said town was laid, your respondent begs leave to state to your honors, that he has ever understood that the said M. Denman had purchased said warrant for six hundred and forty acres, as before mentioned, before said town of Cincinnati was laid out, and that the same

was, by agreement with the said Symmes, to be laid as nearly opposite the mouth of Licking river as an entire section of land could be found, after said Miami purchase should be divided into ranges, townships, and sections, as before mentioned. But your respondent never understood that the said Denman had contracted with Judge Symmes for that tract of land called the town fraction, until after that part of the Miami purchase in which said fraction lies had been divided into townships, sections, &c., to wit, on or about the fourth day of April, in the year one thousand seven hundred and ninety-one, as before stated. And your respondent begs leave further to state, that agreeable to the scheme for the sale and settlement of the Miami lands, published by the said John C. Symmes, in the year 1787, said warrant for six hundred and forty acres of land could not have been laid otherwise than an entire section, it being expressly provided in said publication of the said Symmes, in the tenth page thereof, that no section be divided when the warrant contains a sufficient number of acres to cover the whole section. And your respondent begs leave further to state to your honors, that having purchased said lands as aforesaid, and paid therefor a valuable consideration, relying on the justness of his claim as set forth in this, his answer to said bill of your petitioners, and verily believing that his title to said land, claimed as a common, was good, effectual, and valid, both at law and in equity, hath laid said land out into lots, enclosed a part thereof, and hath, with the knowledge of your petitioners, laid out and expended large sums of money in erecting buildings, and making other improvements upon the premises. And your respondent would further state, that there was not, either at the time of this pretended grant or donation, or at the time of the purchase made by your respondent of the said Denman as aforesaid, or at the time the said John C. Symmes gave and executed his said deed aforesaid to your respondent, any court or courts of chancery within this State or Territory, nor any courts whatever authorized to decree a specific performance of a contract. And your respondent verily believing that said proprietors had a good right and title to said entire section No. 18, as aforesaid, and that the said Mathias Denman had also a good right and title to said fractional section No. 17, as aforesaid, both in law and equity; he, your respondent, was under these impressions induced to enter into the said several contracts as aforesaid, and in fact paid the full estimation value of said lands at the time of said several contracts, so stated as aforesaid. And your respondent would further state to your honors, that the Corporation now known by the name of the PRESIDENT, RECORDER, AND TRUSTEES OF THE TOWN OF CINCINNATI, was not in existence at the time of this pretended donation, nor was the same created or established until long after the aforesaid purchase of your respondent from the said Mathias Denman as aforesaid, nor till long after the execution and delivery of the said deed by the said John C. Symmes to your respondent, stated as aforesaid. And your respondent would further state, that the Corporation aforesaid have not, either by gift, grant, or purchase, or in any manner whatever, acquired any right or title to said lands, claimed as aforesaid, or to any part thereof. And this defendant denies all and all manner of unlawful combination and confederacy with which he is charged; without that, that there is any other matter, cause, or thing, in the complainants' said bill of complaint contained, material or effectual in law, for this defendant to make answer unto, and not herein and hereby sufficiently answered, avoided, traversed, or denied, is true to the knowledge and belief of this defendant; all which matters and things

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this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in the law in this behalf most wrongfully sustained.

JOEL WILLIAMS.

Sworn and subscribed before me, this 11th day of March, A. D. 1806.
JOHN MAHARD, *J. P.*

The demurrer of Joel Williams, defendant, to the bill of complaint of the President, Recorder, and Trustees of the town of Cincinnati, complainants. This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the complainants' bill mentioned, to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth demur, and for cause of demurrer showeth that the complainants have not shown themselves entitled to the relief prayed in and by their bill aforesaid of complaint. 2d. That adequate and complete remedy may be had at law for the injury complained of in the complainants' said bill of complaint. 3d. That there is no equity contained in the said bill. Wherefore this defendant doth demur to the said bill of complaint, and to all the matters and things therein contained, and humbly demands the judgment of this honorable court whether he shall be compelled to make any further or other answer thereto, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HENRY BRUSH, *Counsel for def't.*

The replicants, saving to themselves all and all manner of advantages of exception to the manifold insufficiencies of the said answer, for replication thereto, say, they will aver and prove their said petition to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendant is uncertain, untrue, and insufficient to be replied unto; without that, that any other matter or thing whatsoever in the said answer contained, material or efficient in the law to be replied unto, and herein not replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be able to aver and prove, as this honorable court shall award, and humbly pray as in and by the said petition they have already prayed.

JACOB BURNET, *Att. for complainants.*

The President, Recorder, & Trustees of the town of Cincinnati, *vs.* Joel Williams. } *On the equity side of the Supreme Court of the State of Ohio, sitting in the county of Hamilton.*

This cause coming on before the honorable the Judges of the Supreme Court, sitting as a court of chancery in the county of Hamilton, in the term of November, in the year of our Lord eighteen hundred and seven, in the presence of the counsel on both sides. The substance of the complainants' petition appears to be, that, in the year of our Lord 1787, John C. Symmes, in and by a certain publication, bearing date on or about the 26th November, A. D. 1787, addressed to the respectable public, among other things did set forth and declare that the honorable Congress, by their act of the third October, 1787, authorized the Treasury Board to enter into a

contract with him for a certain tract of land beginning at the mouth of the Great Miami river; thence running up the Ohio to the mouth of the Little Miami river, to a place where a due west line to be continued from the western termination of the northern boundary line of the grant to Messrs. Sargeant, Cutler, &c., should intersect the said Little Miami river; thence due west, continuing the said western line, to the place where the said line should intersect the main branch of the Great Miami river; thence down the Great Miami river to the place of beginning; on the terms and conditions therein mentioned; by which publication the said John C. Symmes did make known the scheme adopted by him for the sale and settlement of said lands, and did invite persons to become purchasers under him, proposing to issue land warrants to the purchasers, authorizing them, their heirs, or assigns, to locate the same on such unlocated lands as they might elect, for which patents should issue to the said purchasers. That some time in or about the month of January, A. D. 1788, one Mathias Denman purchased and entered the 17th fractional section, in the fourth fractional range of townships, on the Ohio river, on which the town of Cincinnati is in part laid out and built, commonly called the town fraction, and also the entire section number 18, adjoining thereto, commonly called the town section, and that, after the said purchase by the said Mathias, and some time within the said year 1788, one Robert Patterson and one Israel Ludlow severally purchased from the said Mathias one third part of the said section and fractional section, numbered as above, and that shortly after the said Mathias, Robert, and Israel, entered into an agreement for laying out and establishing a town on the said lands; and that, in pursuance of said agreement, some time in or about the month of January, A. D. 1789, the said Robert and Israel landed on the ground where the town of Cincinnati now stands. And the said Robert and Israel, who acted in the joint capacity of a proprietor and agent for the said Mathias, proceeded to lay out the town of Cincinnati, in manner and form as the same hath since been recorded, by the said Israel, one of the original proprietors; and for the accommodation of the first thirty settlers in the said town, the proprietors laid out, in the first instance, the front of said town as far westwardly as Main street, and as an inducement to persons to become settlers and purchasers in the said town, and for the future convenience of the citizens, and as an ornament to the said town, the proprietors then set apart all the ground lying between Front street and the Ohio river, extending from the eastern boundary of the said town fraction No. 17, to Main street, and then and there gave, and publicly declared the said ground to be a common, for the use of the citizens of the said town for ever, reserving to themselves only the right of establishing a ferry on the bank of the Ohio, on the said common; and that the tract of land bounded northwardly by Front street, eastwardly by the eastern boundary of the town fraction No. 17, southwardly by the Ohio, and westwardly by Main street, was then and there received, and hath from that time been wholly claimed, and until the trespass in the said petition set forth, hath been held and used as a public common for the benefit and convenience of the citizens to the said town; and that after the said town had been laid out, and the ground above described given by the proprietors thereof for the purposes of a common, to wit, in or about the month of September, A. D. 1794, letters patent was granted, by the President of the United States, to the said John C. Symmes and his associates, for a part of the lands described in the before mentioned publication, including the said town, whereby

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the proprietors and settlers thereof became entitled to receive conveyances, in severalty, for their lots, commons, and public grounds, being associates of the said John in the proprotion of their said claims; that after these transactions, on or about the twenty-sixth of November, seventeen hundred and ninety-four, one Samuel Freeman purchased of the said Robert Patterson his remaining interest as proprietor in the said town, and that on or about the fourth of March, A. D. seventeen hundred and ninety-five, Joel Williams, the above defendant, purchased of the said Mathias Denman his remaining interest in the said town, and that the said Samuel and Joel, at the times of their respective purchases, well knowing the sales and donations that have been made by the original proprietors, and especially knowing that all the land lying between Front street and the Ohio river, and extending from the eastern boundary of the said town fraction to Main street, had been set apart and given, by the original proprietors, as a public common for the accommodation of the citizens of the town, and that the said Joel well know that the said proprietors had received a valuable consideration from the purchasers and settlers in the said town for the ground so set apart as a common, by the increased price of lots sold in consequence of the advantages to be derived from the said common; that on the original map of said town the whole of the ground before described and claimed as a common was left vacant, no lots or streets being laid out on the same, but that all the lots and streets numbered and laid off on the said map, terminated at the boundary of the said common, which original map so containing the said common, was in the possession of the said Joel Williams several years before he pretended to claim any part of said common as private property; and that the said Joel Williams, several years before he became a proprietor under Mathias Denman, frequently conversed on the subject of said common, describing its advantage to the town, and expressing his fears lest the proprietors should attempt, at some future day, to reclaim it for private uses; that after the said Samuel and Joel had become proprietors as aforesaid, it was agreed between them and the said Israel, as proprietors, and the said John C. Symmes, in whom the fee was vested, that the fee of the said town should remain in the said John, in trust, and that all deeds for town lots should be executed by the said John C. Symmes to the purchaser or purchasers, on their producing to him certificates signed by the proprietors of the town, or any two of them, setting forth that the persons producing the same, were entitled to deeds, and that deeds should be issued on no other authority; that the said defendant, in order to deprive the citizens of the said town of the benefits and advantages of the said common, hath procured from the said John C. Symmes a deed of conveyance thereof, in his own name, bearing date on or about the fourteenth day of February, A. D. eighteen hundred; and that, although the said defendant at the time of obtaining the said deed, was, and still is, one of the proprietors of said town, and as such, in equity and good conscience bound to prosecute for and secure to the citizens of the said town the said tract of land as a common; and that, although the said defendant well knew, before and at the time of procuring the said deed, that the said land had been given by the proprietors to the citizens of the said town as a common, and that it had been held and enjoyed as such from the time the said town was laid out until the day of the date of the said deed, given by the said John C. Symmes as aforesaid; yet that the said defendant, under color of his said deed, doth claim the said ground as his right, hath taken possession of the same, and erected divers

buildings, enclosures, and nuisances thereon, denying the right of said town or the citizens thereof, to the same or any part thereof, and that the said defendant refuses to give effect to the aforesaid grant of the original proprietors, by conveying the said ground for the purposes intended by the said original proprietors, or to be held in trust for the objects aforesaid, but hath proceeded to lay off the same into lots, and to appropriate them to private purposes, &c. Therefore, that the said defendant holding the fee of the said common in himself, and pretending to claim it in his own right, may be decreed to execute the agreement of the original proprietors of the said town of Cincinnati, by conveying the lands, given as aforesaid for the purposes of a common, (reserving only the right of a ferry on the bank of the Ohio river,) to the complainants, or to such other persons as might be nominated trustees, for the purpose aforesaid; and that the citizens of the said town might be permitted to use and enjoy the said common, and the nuisances erected thereon might be removed, and the enclosures thereon be thrown open and all further nuisances enjoined, &c.; and that the complainants might have such other and further relief as should be agreeable to equity, and as the court should think fit, &c.; and to be relieved is the scope of the complainants' petition. Whereto the counsel for the defendant alleged, that previous to the twenty-fifth day of August, A. D. seventeen hundred and eighty-eight, the above named Mathias Denman purchased a land warrant of one Joseph Halsey, under the said John C. Symmes, for six hundred forty acres of land, to be laid out within the tract granted by the Congress of the United States to the said John C. Symmes, in manner as set forth in the aforesaid petition; which said warrant was, by agreement of the said parties, to be located as nearly opposite the mouth of Licking river as an entire section could be found, after such land should be divided into townships and sections, and in pursuance of said agreement said warrant was laid on section No. 18, as described in the petition, on which the town of Cincinnati in part stands, and that after the purchase of the said section the said Denman entered into a contract with Robert Patterson and John Filson, to lay out a town on the premises, and to establish a ferry thereon, and that Israel Ludlow was appointed their agent for that purpose; and that the proprietors arrived on the ground in September, seventeen hundred and eighty-eight, and shortly after proceeded to lay off said town, in part; that the said Ludlow was not a proprietor of said town, but merely an agent, in the estimation of the defendant; that the town was laid before the Miami purchase was surveyed into sections, townships, and ranges; that the lots bordering southwardly on Front street, and westwardly by Main street, were first laid, and that certain lots bordering on the ground claimed as a common, were donations to the first settlers, and that the land claimed as a common was reserved by or for the proprietors until the Miami purchase should be surveyed into ranges, townships, and sections, when it would be more fully ascertained whether the said reservation would fall within the entire section, in which case it was to be reserved for the use and benefit of the proprietors, which was declared by the said Ludlow, acting as agent for the proprietors, as the defendant had heard and believed, and that the defendant never knew or believed that the land claimed as a common had been reserved for that purpose; that on or about the fourth of April, A. D. seventeen hundred and ninety-one, Mathias Denman purchased and entered the fractional section No. seventeen, mentioned in the petition aforesaid; that on or about the twenty-sixth day of November, A. D. seventeen hundred and ninety-four, the said Robert Patterson sold to the before named Samuel

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Freeman his right and title as a proprietor in the said town, and that, on or about the seventh day of November, A. D. eighteen hundred and three, the said Samuel did sell and convey to the defendant his right, title, and interest as a proprietor in said town; that on or about the fourth day of March, A. D. seventeen hundred ninety-five, the defendant purchased of Mathias Denman, for the consideration of five hundred and fifty dollars, the one equal undivided third part of all that certain tract of land in the then Northwestern Territory, bounded on the west by lands known by the name of Dayton's sections, on the north by lands known by the name of James Henry's section, on the east by Judge Symmes's section, and on the south by the Ohio river, including the section and fraction above described, on which the town of Cincinnati now stands, as described in the petition; that the defendant having heard that the land claimed as a common by the complainants had been reserved, in manner as before stated, by the proprietors, did at several times converse with divers persons, citizens of said town, respecting said land claimed as a common, requesting to procure or endeavor to procure, from the proprietors, a deed, or some memorandum in writing, the uses and purposes mentioned in the petition; that the defendant having been told that the lands aforesaid had been reserved for future use, purchased as above described; that at the time the defendant purchased of the said Denman, in addition to the consideration above mentioned, he agreed to pay to John C. Symmes a balance due from the said Denman, with the said Symmes, on the original agreement of the said Denman with the said Symmes for the purchase of the lands aforesaid; and that, on or about the fourteenth day of February, A. D. eighteen hundred, he paid the said John C. Symmes the said balance, so assumed, and then and there received from the said John C. Symmes a deed of conveyance of a part of the said fraction seventeen; that the said defendants had proceeded to lay out the land above described as a common into lots, enclosed a part, and erected buildings on the same. Wherefore, and upon debate of the matter, and hearing the deed conveying the premises in question to the defendant, and other documents relating thereto, and the proofs taken in this cause read, and having duly examined the same, and what was alleged by the counsel on both sides, the court declare that they do think fit, and do order and decree, and accordingly it is ordered and adjudged and decreed, that the said Joel Williams, the defendant, do execute and deliver, on or before the first day of March next, which will be in the year of our Lord eighteen hundred and eight, to the President, Recorder, and Trustees of the town of Cincinnati, and their successors, a good and sufficient deed, conveying to them, in fee simple, all the right and title derived by the said Joel from the deed executed to him by John C. Symmes on or about the fourteenth day of February, A. D. eighteen hundred, of, in, and to the tract or fraction of land in the said town of Cincinnati, bounded northwardly by Front street, eastwardly by the eastern boundary of the town, southwardly by the Ohio river, and westwardly by Main street, in trust for the inhabitants of Cincinnati, to be used as a common for ever, reserving, however, to the said Joel Williams, and his heirs, the exclusive right of a ferry opposite to, and of a landing for that purpose, on the premises, and reserving, under the conditions herein after mentioned, the use of the brick house erected by the said Joel on the premises, together with fifty feet in front, commencing at the northwest corner of said house, and one hundred in rear, towards the Ohio river, together with all the buildings and appurtenances

that may be on said last described piece of land, for the term of eight years, from the first day of April next. And it is further ordered and decreed, that the said Joel Williams prostrate and remove all the buildings, fences, and nuisances, of what kind soever, erected on the premises, except such as are contained within the parcel of land last described, on or before the first day of March next, which will be in the year of our Lord eighteen hundred and eight, and the said Joel Williams be, and is for ever prohibited and enjoined from erecting any further buildings, fences, or any other nuisances upon any part of the premises. And it is further ordered, adjudged, and decreed, that in case the said Joel Williams shall proceed to erect any further nuisances on the premises, or shall not make, execute, and deliver his deed, as above mentioned, conveying all his right and title to the premises derived from the deed of John C. Symmes, of the date of February 14th, A. D. eighteen hundred, by the first day of March, A. D. eighteen hundred and eight, that then, and in such case, the complainants shall be at liberty to take their execution or writ of possession, and that the whole land claimed in the complainants' bill shall be liable to be taken and seized in execution in satisfaction of this decree, with all the buildings thereon and all the appurtenances thereof, without excepting the parcel of land and buildings above reserved for the defendant's use, for the term of eight years, as above mentioned. And it is further ordered, adjudged, and decreed, that the President, Recorder, and Trustees of the town of Cincinnati, and their successors in office, upon receiving a legal title to, or seizing the land in question by execution, as above mentioned, shall stand seized thereof in fee simple, to the use of the inhabitants of the said town, for a common for ever, provided that the interest of any other person or persons, not parties to the complainants' bill, nor claiming under the defendant, shall in no wise be affected by the foregoing decree. It is further ordered, that the defendant shall pay the costs of this suit.

SAM'L HUNTINGTON,
GEORGE TODD,
Judges of Supreme Court.

Costs taxed $112 41.

Whereupon the sheriff was commanded in the following words, to wit:

The State of Ohio, Hamilton county, ss.—To Aaron Goforth, Esq., sheriff of our said county, greeting:

Whereas the President, Recorder, and Trustees of the town of Cincinnati, lately, in our Supreme Court, obtained a judgment or decree in chancery, and recovered against Joel Williams, of the town aforesaid, the messuages, tenements, and commons, with the appurtenances, as follows: The court declare that they do think fit, and do order and decree, and accordingly it is ordered, adjudged, and decreed, that the said Joel Williams, the defendant, do make, execute, and deliver, on or before the first day of March next, which will be in the year of our Lord eighteen hundred and eight, to the President, Recorder, and Trustees of the town of Cincinnati, and their successors, a good and sufficient deed, conveying to them, in fee simple, all the right and title derived by the said Joel from the deed executed to him by John C. Symmes, on or before the fourteenth day of February, A. D. eighteen hundred, of, in, and to the tract or fraction of land in the said town of Cincinnati, bounded northerly by Front street, easterly by the

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eastern boundary of the town, southwardly by the Ohio river, and westwardly by Main street, in trust, for the inhabitants of Cincinnati, to be used as a common for ever, reserving, however, to the said Joel Williams, and his heirs, the exclusive right of a ferry opposite to, and of a landing for that purpose, on the premises, and reserving, under the conditions herein after mentioned, the use of the brick house erected by the said Joel Williams on the premises, together with fifty feet in front, commencing at the northwest corner of said house, and one hundred feet in rear, towards the river Ohio, together with all the buildings and appurtenances that may be on said last described piece of land, for the term of eight years, from the first day of April next. And it is further ordered and decreed, that the said Joel Williams prostrate and remove all the buildings, fences, nuisances, of what kind soever, erected on the premises, except such as are contained within the parcel of land last described, on or before the first day of March, in the year of our Lord eighteen hundred and eight, and that the said Joel Williams be, and is for ever prohibited and enjoined from erecting any further buildings, fences, or other nuisances, upon any part of the premises. And it is further ordered, adjudged, and decreed, that in case the said Joel Williams shall proceed to erect any further nuisances on the premises, or shall not make, execute, and deliver his deed, as above mentioned, conveying all his right and title to the premises, derived from the deed of John C. Symmes, of the date of February 14th, A. D. eighteen hundred and eight, that then, and in such case, the complainants shall be at liberty to take their execution on a writ of possession, and that the whole land claimed and described in the complainants' bill shall be liable to be taken and seized in execution in satisfaction of this decree, with all the buildings thereon and appurtenances thereof, without excepting the parcel of land and buildings above reserved for the defendant's use, for the term of eight years, as above mentioned. And it is further ordered, adjudged, and decreed, that the President, Recorder, and Trustees of the town of Cincinnati, and their successors in office, upon receiving a legal title to, or seizing the land in question by execution, as above mentioned, shall stand seized thereof, in fee simple, to the use of the inhabitants of the said town for a common for ever; that the interest of any person or persons, not parties to the complainants' bill, nor claiming under the defendant, shall in no wise be affected by the foregoing decree. It is further ordered that the defendant shall pay the costs of this suit. And wherefore, in our same court, before us, it is considered that the President, Recorder, and Trustees of the town of Cincinnati, may have their execution of the judgment against the said Joel Williams, according to the force, form, and effect of the recovery aforesaid, as it appears also to us on record. Therefore we command you that you, without delay, cause the said President, Recorder, and Trustees of the town of Cincinnati, and their successors, to have possession of and in the tenements, with the appurtenances aforesaid. We also command you, that of the goods and chattels of the said Joel Williams, you cause to be made the costs of this writ, together with your legal fees thereon. How you shall execute this writ, together with all and singular your proceedings thereon, make due return to the court of common pleas, at Cincinnati, on the first Tuesday of April next.

Witness the honorable George Todd, esq., chief judge of our same court, at Cincinnati, the sixth day of February, A. D. 1810.

JOHN S. GANO, *Clerk.* [L. S.]

Which execution is afterwards, in pursuance of the command therein, returned, with the following return endorsed, to wit: "By virtue of the within writ, to me directed, I did, on the first day of March, last past, cause the President, Recorder, and Trustees of the town of Cincinnati, to have possession of and in the tenements, with the appurtenances, within mentioned, by peaceably delivering the same to them and leaving them in the possession thereof, and have made the costs of this writ as within is commanded me.

AARON GOFORTH, *Sheriff.*

Sheriff's fees, 82 cents.

The State of Ohio, Hamilton county, sct.

I, Daniel Gano, Clerk of the Supreme Court of the State of Ohio, in and for said county, do hereby certify the within and foregoing to contain a correct copy of the record and proceedings had in said court, in suit of the President, Recorder, and Trustees of the town of Cincinnati *vs.* Joel Williams, together with a true copy of the writ of possession issued thereon, with the return of sheriff, as endorsed, abstracted from record No. 1, pages 158 to 178. Also correct copies of the depositions in said case.

In testimony whereof, I have hereunto set my hand and affixed the seal of our said court, at Cincinnati, this 3d day of July, A. D. 1829.

DANIEL GANO, *Clerk.* [SEAL.]

And also proved that said President, Recorder, and Trustees, were put into possession of said premises by the sheriff under said execution, issued upon said decree as aforesaid; and that they had ever since occupied and claimed the same as a common under said decree. It was also admitted, that by several acts of the Legislature of the State of Ohio, the interest acquired by said President, Recorder, and Trustees, under the decree and proceeding aforesaid, was vested in the city of Cincinnati, the defendant. To the admission of which said record and proceedings as a *bar* to his action, the plaintiff objects, which objection was overruled by the court, and the record admitted as such bar; to which opinion of the court the plaintiff excepts, and prays that these, his exceptions, be sealed; and thereupon the court instructed the jury, that the record and proceedings aforesaid were a bar to the said action, and that the plaintiff was estopped and concluded thereby, to which instructions of the court the plaintiff excepts, and prays that this, his bill of exceptions, be sealed.

JOHN McLEAN, [SEAL.]
JOHN W. CAMPBELL, [SEAL.]

And on motion of plaintiffs, a writ of error is allowed in this cause to the Supreme Court of the United States, on condition a bond is filed with the clerk of this court in the sum of five hundred dollars, with Providence White and Robert Benefil, security. It being agreed by the parties that the property in dispute exceeds two thousand dollars in value.

And afterwards, to wit, on the fifth day of October, in the year of our Lord one thousand eight hundred and thirty, the said plaintiff caused to be filed in the office of the clerk of the court aforesaid, the following bond, to wit:

Know all men by these presents, that we, Providence White and Robert Benefil, of Hamilton county, Ohio, are held, and stand firmly bound unto the President, Recorder, and Trustees of the city of Cincinnati, in the just

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and full sum of five hundred dollars, lawful money of the United States, to be paid to the said President, Recorder, and Trustees of the city of Cincinnati, for the payment whereof well and truly to be made they bind themselves, their heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals; dated this tenth day of September, A. D. 1830.

The condition of the above obligation is such, for that whereas John Doe, ex dem. Edward White, hath obtained a writ of error, &c., on a judgment obtained by the President, Recorder, and Trustees of the city of Cincinnati, in a suit prosecuted by the said John Doe, ex dem. Edward White, against the President, Recorder, and Trustees of the city of Cincinnati, at the July term of the circuit court of the United States for the seventh circuit and district of Ohio, and commencing on the second Monday of said month of July, A. D. 1830, in an action of ejectment, &c.: Now the condition of the above obligation is such, that if the said writ of error shall be prosecuted to effect, and the judgment of said circuit be reversed, then and in that case the said obligation shall be wholly void, otherwise it shall be and remain in full force and virtue in law.

PROVIDENCE WHITE, [SEAL.]
ROBERT BENEFIEL, [SEAL.]

Signed, sealed, and acknowledged, in presence of
SILAS W. LEONARD,
JACOB WHITE.

The United States of America, district of Ohio, sct.

I, William Miner, clerk of the seventh circuit court of the United States, in and for the district of Ohio aforesaid, do hereby certify the aforegoing to be a true transcript of the record, judgment, and proceedings therein, in a suit determined in said court, in which John Doe, ex dem. Edward White, was plaintiff, and the President, Recorder, and Trustees of the city of Cincinnati, were defendants, as the same remains among the files of said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, this third day of November, in the year of our Lord one thousand eight hundred and thirty, and of the independence of the United States the 55th.

Attest: WILLIAM MINER, *Clerk.* [SEAL.]

The United States of America to the honorable the Judges of the circuit court of the United States for the seventh circuit and district of Ohio, greeting:

Whereas in the record and process, and also in the rendering judgment in a certain action of ejectment which was in the said court, between the lessee of Edward White, plaintiff, and the President, Recorder, and Trustees of the city of Cincinnati, defendants, manifest error hath intervened, as it is said, to the great damage of the said lessee of Edward White, as by complaint we are informed, and we being willing that the error aforesaid, if any, be corrected, and full and speedy justice be done in this behalf to the said parties, command you that the record, process, and judgment aforesaid, with all things touching the same, under your seals, distinctly and plainly, without delay, you send and certify to the Judges of the Supreme Court of the United States, on the first day of the next term of said court,